

Top Eight Strategies for Successfully Acquiring Property in the CDBG Program



1. Project planning is the key to a successful project.

Regulations require that agencies conduct a planning process for projects involving relocation and/or acquisition. While there are numerous methods of project planning, HUD looks for a process that will ensure that the project is feasible before pursuing the project. The key areas the agency should review are:

- Displacement – The project should minimize displacement and the agency should take all reasonable steps to minimize displacement as a result of the project;
- Budgetary Implications – Early, common sense planning will ensure that sufficient funds are available for the project, including meeting obligations under acquisition and relocation rules;
- Coordination – Determine what other organizations, including other government agencies, will be needed for a successful project;
- Consultation with the community – Consultation should be early in the process; and
- Determining Resource Needs – Determine what resources (including staffing, training and other capacity building activities) will be needed to support relocation and acquisition.

2. Keep all parties informed.

Throughout the planning process and execution phases, keep parties informed of what is occurring and what the next steps will be. Remember, in many states, the sunshine laws¹ require discussion of acquisition of property in public meetings, so the individuals, families, and businesses may hear of the potential acquisition long before the grantee is prepared to notify and discuss the acquisition with the affected property owners. Keeping impacted individuals, families and businesses informed through an informal process, including newsletters, invitations to meetings or neighborhood discussions may help to reduce rumors and concerns. Note that various public meetings are not a substitute for the formal Uniform Relocation Assistance and Real Property Acquisition Policies Act (URA) noticing requirements, but serve as additional tools to provide information.

¹ Sunshine laws are U.S. federal and state laws requiring regulatory authorities' meetings, decisions and records to be made available to the public. The requirements under sunshine laws vary from state to state.

3. Before beginning a project, determine if real property acquisitions are subject to the voluntary acquisition requirements of the URA [49 CFR 24.101 (b)(1)-(5)] or if they are subject to the full acquisition requirements at URA 49 CFR 24 Subpart B.

Agencies must understand the differences between a *voluntary acquisition* and an *involuntary acquisition* of property. While there are protections for property owners in both situations, only involuntary acquisitions trigger the full acquisition and relocation requirements of the Uniform Relocation Act.

Voluntary acquisition requirements for agencies with power of eminent domain identified in [49 CFR 24.101(b)(1)]:

- No specific site or property needs to be acquired, although the Agency may limit its search for alternative sites to a general geographic area. When an Agency wishes to purchase more than one site within a geographic area on this basis, all owners are to be treated similarly.
- The property to be acquired is not part of an intended, planned, or designated project area where all or substantially all of the property within the area is to be acquired within a specific period of time.
- The Agency will not acquire the property in the event negotiations fail to result in an amicable agreement, and the owner is so informed in writing.
- The Agency will inform the owner in writing of what it believes to be the fair market value of the property.

(NOTE: In a voluntary acquisition, an owner is not eligible for relocation assistance)

If tenants are displaced, the tenants are provided relocation assistance in either voluntary or involuntary acquisition.

Voluntary acquisition requirements for agencies without power eminent domain [49 CFR 24.101(b)(2)]:

- Prior to making an offer for the property, clearly advise the owner that it is unable to acquire the property in the event negotiations fail to result in an amicable agreement; and
- Inform the owner in writing of what it believes to be the fair market value of the property.

(NOTE: In a voluntary acquisition, an owner is not eligible for relocation assistance.)

If tenants are displaced, the tenants are provided relocation assistance.



Involuntary acquisition is subject to the full acquisition requirements of 49 CFR 24 Subpart B.

The remainder of this document serves as a guide to carrying out acquisition activities in accordance with the requirements in Subpart B.

4. Ensure real property is appraised in accordance with URA appraisal requirements.

All appraisals must be conducted in accordance with 49 CFR 24.103, and reviewed in accordance with 49 CFR 24.104. The appraisal requirements outlined in Part 24.103 are intended to be consistent with the Uniform Standards of Professional Appraisal Practice (USPAP). An appraisal Scope of Work is not only required but is critical since it establishes an understanding between the appraiser and the agency on the specific requirements of the appraisal. A sample scope of work is available as Appendix 19 of HUD Handbook 1378. The property owner must be provided the opportunity to accompany the appraiser during the property inspection.

The appraiser and review appraiser must each be qualified and competent to perform the appraisal and review appraisal assignments, respectively. Among other qualifications, State licensing or certification and professional society designations can help provide an indication of an appraiser's abilities.

5. Understand that a three-step process is used to determine the just compensation.

The grantee determines the just compensation amount to be offered the property owner in a three-step process.

- First, an appraiser prepares an appraisal of the property to be acquired. The appraisal provides the appraiser's estimate of the property's fair market value.
- Second, a qualified review appraiser evaluates the appraisal which will then be the basis of the agency's estimate of just compensation.
- Third, the agency establishes the just compensation amount to be offered to the property owners. The offer may not be less than the approved fair market value of the property.

For some uncomplicated, low value acquisitions (i.e., less than \$10,000), the grantee may determine an appraisal is not required and prepare a waiver valuation that will provide the basis of the Agency's offer of just compensation. (See HUD Handbook 1378 Chapter 5 for more information.)



6. Ensure that the written purchase offer is complete and contains all required supporting documentation.

The written purchase offer must include the just compensation amount along with a summary statement that explains the basis for the offer. The summary statement must include:

- A statement of the full amount offered as just compensation;
- An accurate description and location identification of the property to be acquired;
- The interest the agency wishes to acquire must also be included (fee simple easement); and
- A list of the buildings and other improvements covered by the offer.

The list of the property to be acquired must be accurate to avoid situations where an item is included in the appraised value and written offer but subsequently relocated at the grantee's expense.

7. Successful negotiations are based on clear and precise information.

Negotiations may not begin until the written purchase offer is made. During negotiations, it is critical that both the grantee and the owner begin by clarifying the written purchase offer to ensure that no misunderstandings exist regarding the offer or its terms. The owner must be provided a reasonable opportunity to consider the offer and provide additional information that may not have been considered in the appraisal or the offer of just compensation and may request a modification to the terms of the offer as a result.

Under limited conditions, an agency is authorized to approve a purchase price exceeding the agency's estimate of just compensation. These are called administrative settlements, which are made when reasonable efforts to negotiate an agreement at the Agency's purchase price have failed. Administrative settlements can only be approved if they are:

- Reasonable;
- Prudent; and
- In the public interest.

All administrative settlements must be supportable and documented. The grantee must also fully document any changes made to the written purchase offer. All documentation must be included in the official files.



8. Ensure that all of the components of the offer are well coordinated.

While many of the components of the offer made are obvious (such as the value of the property) remember that there are other parts of the offer, such as the reasonable and necessary costs required to complete the sale including recording fees, transfer taxes, penalty costs related to mortgage prepayment, etc.

It is also important to remember that while the acquisition offer must be able to stand on its own merits. Under an involuntary acquisition, the owner may be considering the acquisition offer in addition to potential relocation payments under the URA.² For successful acquisitions of property which also require relocation, the two pieces must work together, so it is in the grantee's best interest to ensure that the acquisition and relocation packages are always well coordinated.

² In an involuntary acquisition the URA requires that the owner's moving costs be covered (see 49 CFR 24.301 and .302) and he/she may be entitled to replacement housing payments under 49 CFR 24.401 or .402.